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Newsroom

Justice Alito at RWU Law, Pt. 2

U.S. Supreme Court Justice Samuel Alito spent Friday at RWU Law, meeting with students, teaching a Con Law class and participating in a “fireside chat.”

[[Read Part 1](#)]



BRISTOL, R.I., Sept. 14, 2012 – After a busy morning, Justice Alito sat down for lunch with RWU Law’s faculty, where Professor Colleen Murphy asked him about the similarities between the law and religion, namely in the importance each institution gives to tradition and ritual.

Justice Alito said tradition and ritual work best when politics are kept out of the mix, and raised the example of the 2010 State of the Union address, in which he was shown on camera mouthing disagreement with President Obama’s characterization of the *Citizens United* case.

“There’s a value in the ceremony” he said of the State of the Union, but added that it “has become a political event in which the President gives a political speech.” The result is a “remarkable atmosphere” not readily discernible on television, in which “the members of Congress keep up a running commentary on what the President is saying” – while frantically engaging in a partisan dance of standing or not standing, pointedly applauding or pointedly not applauding, as the speech proceeds.

Meanwhile, “we [justices of the Supreme Court] are supposed to be apolitical” and not overtly react to the speech, Justice Alito said. “That puts us in a difficult position.”

A member of the bar asked the Justice about how much weight the Court gives to precedent and *stare decisis*. “It’s a very big issue,” Justice Alito said. “When are you overruling and when are you simply not

extending a precedent? We do disagree on the holding of a case, and on whether the holding was on point, and needed to be overruled.”

Overall, he concluded, “what the Court has said on *stare decisis* cannot be reduced to a sharp rule. There’s lots of room for disagreement among reasonable minds. But the vast majority of cases are based on precedent.”

Professor Zoe Argento asked about Justice Alito’s selection process for clerks, and he said he reviewed all applications himself. Letters of recommendation from judges of his acquaintance are helpful, he said, but in general his method of vetting clerks is “quite impressionistic.”

LSATs and Dog Biscuits

Asked by Professor Diana Hassel about his thoughts on legal education reform, the Justice zeroed in on testing. He said legal education placed “excessive reliance on the LSATs” and said the fact that graduates, after three years of law school, had to pay for a cram course in order to pass the bar is “particularly ridiculous.” He added that he did not like the prevailing “hierarchy of law schools,” and that he wished more law graduates were able to “stay where they grew up” and practice law in their communities.

An alumnus asked Justice Alito about the sources he relied upon in deciding “close-call cases.” After noting his deference to statutory language and lower court rulings, Alito referred to the 2010 case of *U.S. v. Stevens*, an 8-1 decision in which the Court struck down, on free-speech grounds, a federal ban on videos showing graphic violence against animals.

Justice Alito, a dog owner himself, was the sole dissenter. He joked that this was because he let his springer spaniel, Zeus, decide the case by placing briefs for both sides in front of him with dog treats on top.



'Fireside Chat'

Though fire codes and late-summer weather ruled against the use of an actual fireplace, a pair of comfortable armchairs and a casual, relaxed atmosphere prevailed for the final public event of the day, in which the Justice and the Honorable Ronald A. Cass -- a longtime friend of Alito and a member of the law school's board of directors -- sat down to chat in the Appellate Courtroom.

Cass opened the discussion by providing a number of fast numerical facts about Alito: He's the 110th Justice of the Supreme Court of the United States; the 11th Catholic; the 6th New Jersey native (but only the 4th to admit it); the 2nd Italian-American and the 2nd born in the 1950s. Finally, he is the first to have ascended to the Court from the 3rd Circuit Court of Appeals.

The Justice observed that, while some of his colleagues had appeared shows such as Charlie Rose and The Daily Show, "this is the closest I'll get."

He opened with a discussion of the various jobs he'd held -- from a Second Lieutenant in the U.S. Army Signal Corps, to a judicial clerk after graduating from Yale Law School, to Assistant to the Solicitor General, Deputy Assistant to the U.S. Attorney General, U.S. Attorney for the District of New Jersey; and finally his appointment to the Third Circuit. Of all those jobs, his favorite? "This one."

Picking Cases



The Justice talked at length about the winnowing process

by which the Court selects its cases. The justices, he said, seek cases that (1) address conflicts in decisions between the lower courts, whether between the federal courts of appeal, or between state and federal courts that show few signs of resolving on their own (“we don’t snap up a case as soon as a conflict arises”), and (2) provide factually “good vehicles” through which to get at the point of law in issue; or which (3) are simply too important to defer review.

Justice Alito said he has become “more dissatisfied over the years” with the Court’s method of vetting cases via memos penned by law clerks – the so-called “cert pool.” As a result, he said, he has withdrawn from the pool and now goes through the cases personally, thereby acting as a sort of “safety net under the cert pool.”

He talked about the efficiency of the briefing system compared to earlier generations, when there were no briefs, just oral presentations with no time limits and no limit on the number of attorneys. For the justices, he said, it was “a kind of test of exhaustion.” Today, he said, the “quality of briefs is incredible,” enabling the Court to be extremely well-informed about every case, and oral arguments basically just “confirm the analysis you’ve tentatively formed about the case.”

Getting It Wrong

He added that occasionally, as a Supreme Court Justice, “you’ll change your mind in the process of writing an opinion. You’ll find gaps and weaknesses” in your analysis and change your vote – “maybe once in a term.”

Speaking about *Citizens United*, he noted that the media widely misunderstood and misreported the true import of the case – but said it was not the justices’ place to correct such misinterpretations. “We speak through our opinions, and we really don’t have an opportunity to speak – and I don’t think it would be a

good idea to speak, except in an objective way – about what we’ve done.” He added the Court’s decisions are often “highly technical” and that media accounts can be unreliable because it is “easy to get [the fine points of a complex decision] wrong inadvertently.”

“Sometimes opinions are spun, just like everything else,” he said. “They’re reduced to a slogan that you might put on a bumper sticker. And that’s very frustrating.”

Alito recalled a visiting justice from the Supreme Court of Canada who said that in his country, reporters are locked into a room and briefed on new court rulings to make sure they thoroughly understand the decision before publishing.

“I thought, this is a wonderful idea; why don’t we implement this in the United States? Until I found out that at the end of the process they actually unlock the door and they let them out,” Alito joked.

U.S. Supreme Court visits have become a tradition at Rhode Island’s only law school, a rare accomplishment for an institution not yet 20 years old (that anniversary is coming up next year). In 2011, students enjoyed a similar visit from Associate Justice Stephen Breyer. In 2008, Associate Justice Antonin Scalia spent a day with students at RWU Law, and earlier that same year Chief Justice John Roberts addressed its students and swore in more than 40 of its recent alumni to the federal bar. Groups of RWU Law students have also met with Associate Justice Ruth Bader Ginsburg, Associate Justice Elena Kagan, Associate Justice Anthony Kennedy and retired Associate Justice Sandra Day O’Connor.

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